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SEP. 17 1993

September 17, 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: MM Docket No. 93-107
Channel 280A
Westerville, Ohio

Dear Mr. Caton:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and six (6) copies of its "Reply to Opposition of Ringer."

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By: 
John W. Hunter

By: 
Stephen P. Yelverton

Enclosure

B:CATON.107

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SEP 17 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of:

DAVID A. RINGER

et al.,

Applications for Construction
Permit for a New FM Station,
Channel 280A, Westerville,
Ohio

MM Docket No. 93-107

File Nos. BPH-911230MA

through

BPH-911231MB

To: Administrative Law Judge
Walter C. Miller

REPLY TO OPPOSITION OF RINGER

Respectfully submitted,

MCNAIR & SANFORD, P.A.

By: _____
John W. Hunter

By: _____
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September 17, 1993

B:CATOM.107

REPLY TO OPPOSITION OF RINGER

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Sections 1.229 (d) and 1.294 (c)(1) of the Commission's Rules, hereby submits this reply to opposition. On August 18, 1993, ORA filed a motion to enlarge the issues against David A. Ringer ("Ringer"). In reply to the opposition, ORA submits the following comments.

As noted in ORA's motion to enlarge the issues, Ringer proposes to operate his station by leasing the existing facilities of defunct Station WBBY-FM. That station operated at 3kw with an omnidirectional transmitter. Ringer proposes to operate at 4.3 kw with a directional antenna (Dep. Tr. 27, 47, 52-54, 64). Ringer never considered the cost of a directional antenna in determining his cost estimates for the new station and he never made an inquiry as to how much such an antenna would cost (Dep. Tr. 53-54, 76). A written budget prepared by Ringer contains no reference to a directional antenna.

Ringer also failed to include in his budget or cost estimates funding for programming. Although he claims that programming can be obtained free from a satellite service, no inquiry was made to any satellite service as to the availability of free programming (Dep. Tr. 28, 59). Another omission in Ringer's budget is payroll taxes, such as FICA and unemployment (Dep. Tr. 60).

Ringer further failed to include in his budget funding for auxiliary power, which he proposes to install and utilize (Ringer Hearing Ex. 3). Although Ringer believes that auxiliary generators will be included in the lease of the Station WBBY-FM facilities, he is not certain that the station has such equipment (Dep. Tr. 28-29, 31-32).

In opposition to the motion to enlarge the issues, Ringer concedes that the above-noted omissions were made in his cost estimates, but pleads that he nevertheless acted in "good faith." However, even if Ringer's pleas of "good faith" were accepted, it would only negate the specification of a misrepresentation issue. A basic financial qualifications issue would still be required.

Ringer, in his opposition, at para. 7, claims that he is willing and able to pay for any items which were omitted from his cost estimates. However, this

post hoc promise constitutes a revised financial proposal which can not be considered unless accompanied by an amendment to Ringer's application and a showing of "good cause." Aspen FM, Inc., 6 FCC Rcd 1602, 1603, paras. 11-13 (1991).

In his application, Ringer committed at the time of certification only \$210,880 of his funds for construction and the first three months of operation of the proposed station. Thus, this is the amount to be credited to support his cost estimates and not a vague generalized promise to provide whatever it takes.

Ringer, in his opposition, at para. 4, contends that because he has a \$50,000 "cushion" in his cost estimates, Commission policy would allow him to use this "cushion" to cover the costs of a directional antenna and auxiliary power generators. However, Ringer's reliance on Sampson Broadcasting Co., Inc., 52 FCC2d 954, para. 5 (1975) is misplaced. There, the omitted items were minor and insignificant in cost. The items consisted of microphones, cassette recorders, tape cartridges, and spare parts. Here, the omitted items are major and significant in cost.

In any event, Ringer fails to demonstrate that \$50,000 would cover the costs of such major items as a directional antenna and auxiliary power generators. In support of his claim of an adequate cushion, Ringer merely submits his self-serving declaration, dated August 31, 1993, at para. 6, that he is "sure" that the cost of a directional antenna can be covered by \$50,000.

However, Ringer makes no mention of personally obtaining a price quote from a broadcast equipment vendor. This failure to obtain a price quote for a directional antenna is significant in view of the fact that Ringer did personally obtain quotes for auxiliary power generators and for programming.

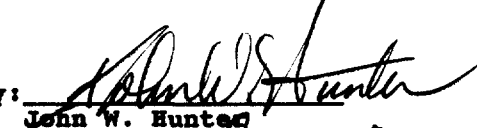
Ringer's price quotes for auxiliary power generators and for programming must, in any event, be rejected because they are not supported by an affidavit from the person giving the quotes. Section 1.229 (d) requires that oppositions to a motion to enlarge the issues be supported by affidavits from persons having personal knowledge of the facts asserted.


In his opposition, at para. 4, Ringer makes an amazing assertion. He states that, "should he need" to purchase a directional antenna and auxiliary power generators ... However, there is nothing contingent or tentative about Ringer purchasing these items. His application proposes the use of a directional antenna. Indeed, Ringer's coverage proposal in the Joint Engineering exhibit is based upon the use of a directional antenna. Ringer's hearing exhibit proposes the use of auxiliary power generators. If Ringer is now hedging about the use of a directional antenna and auxiliary power, he should receive no comparative credit for his coverage proposal and for auxiliary power.

WHEREFORE, in view of the foregoing, ORA requests that financial qualifications issues be specified against Ringer based upon his patently defective cost estimates and an inadequacy of committed funds at the time of certification.

Respectfully submitted,

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September 17, 1993

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CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney in the law firm of McNair & Sanford, P.A., do hereby certify that on this 17th day of September, 1993, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Reply to Opposition of Ringer" to the following:

The Honorable Walter C. Miller*
Administrative Law Judge
Federal Communications Commission
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*Hand Delivery